

APPENDIX D - CITY OF KIRKLAND SOLID WASTE COLLECTION RFP
RESPONSE TO INDUSTRY REVIEW COMMENTS
DECEMBER 27, 2016

	Section	Hauler	Question	Response	Action
1.	RFP §1.1	Recology	<p>§1.1 states that the City may, at its option, conduct a “best and final” round following the initial submission of proposals. This approach raises concerns. It has been our experience in other jurisdictions where, between the initial round and the “best and final” round, bidders were able to make successful Public Records Act requests for other bidders’ proposals. This allowed all bidders, in the final round, to exploit each other’s competitively sensitive information, copy their ideas, and undercut their prices. The result was an unfair, contentious, and we think unethical procurement process, which likely exposed the jurisdictions to an increased administrative burden and litigation risk. Additionally, a “best and final” round creates an irrelevant/ineffective initial round whereby bidders are not presenting their best and most competitive proposal.</p> <p>Preparing a competitive proposal requires a significant investment, which we are willing to make if we know the process is fair. We therefore encourage the City to confirm either that there will be no “best and final” round, or that, if there is one, bidders’ proposals are to be kept confidential until the procurement process is completed and the successful bidder is selected. If the City cannot provide either assurance, we will respectfully decline to participate in this process</p>	<p>The City must respond to all public disclosure requests. The City requests that proponents respect the underlying integrity of a competitive procurement during the process, and refrain from seeking their competitor’s proposals during the evaluation process. In the event that a request is received, the City will inform the subject(s) of the pending request and that subject(s) have the option of seeking an injunction to restrict disclosure of proprietary elements of their proposal(s) (if any), although that injunction may not be successful. In the event that one proponent has information on their competitors’ rate proposals after the initial round, the City will consider providing all rate proposal information to all proponents so that no single proponent gains an unfair advantage. The City would prefer keep the process confidential during prior to, and during a best and final round, and will do so if no public disclosure requests are received during the process.</p> <p>Note that the purpose of a “best and final” round is not to seek a second round of rate proposals on the same base contract. Rather it is a chance for the City to address acceptable contract revisions (identified as contract exceptions in initial proposals), to select preferred alternatives to wrap into a revised base contract, and to make other changes to the contract based on proposals, changing conditions, Council direction or other events. Rates based on the revised contract would then be solicited and used to calculate the rate score of proposals.</p>	No change.
2.	RFP §1.1	Waste Management	Will the City consider mutual extensions instead of City unilateral options to extend? Mutual extensions represent a partnership, which is what WM desires to continue through a new contract with the City.	No. The intention is to have a couple short-term extensions under the original terms and conditions. Mutual extensions tend to be seen as “contract openers” and opportunities to extend and renegotiate the contract, which is not the City’s intention.	No change.
3.	RFP §1.2	Recology	Does the City intend to purchase or have the winning bidder purchase WM’s containers? If so, could the City please provide details before the final RFP is issued, so bidders can price their proposals properly? This would include the number of containers of each type, and the total purchase price.	The estimated end of contract value will not be available at the time the RFP is issued, but the City will obtain the best estimate available and will provide this via Addendum once available.	No change at this time.

4.	RFP §1.2	Waste Management	The second to last sentence in this paragraph appears to be incomplete. Please clarify.	The final word is “...available.”	The RFP has been revised.
5.	RFP §2.6	Waste Management	Please confirm the City’s desire to discontinue negotiations with a selected bidder will not be subject to a loss of the PSB.	Confirmed, as long as the reason for discontinuing contract finalizations is not the refusal of a selected Proposer to perform under the terms and conditions of the draft contract provided by the City during the RFP process.	No change.
6.	RFP §2.7	Waste Management	Please provide the City’s service exemption list as it pertains to mandatory service. Please also provide a listing and dates for any anticipated annexations during the term of the agreement as may be known by the City at present time.	There are no anticipated annexations during the term of the agreement. There are only five single-family service exemption permits that have been approved and issued to date. No exemption permits have been issued to date for Multifamily or Commercial customers.	No change.
7.	RFP §2.11.1	Recology	Evaluation Criteria: Will the City weigh points in favor of a contractor with a local call center?	Yes. Per Section 2.11 (4) (A) Bullet 3.	No change.
8.	RFP §2.11(3a)	Waste Management	The last sentence of the paragraph seems to indicate the City could award the business to more than one Contractor and execute more than one contract. This is in direct conflict with the City’s assertion in Section 1.1, second paragraph, where it reads that the “City intends to award one comprehensive Contract for all lines of business.” Please clarify or correct the inconsistency.	Replace “intends” with “prefers”.	The RFP has been revised.
9.	RFP §2.11(4B)	Waste Management	Will the City unilaterally choose client city interviews or will the hauler be engaged in the process by providing appropriate client references and contact information?	The City will interview peers at other cities, as appropriate, without Proposer involvement.	No change.
10.	RFP §2.11(4C)	Waste Management	1 st and 2 nd bullets: Does the City desire additional acceptable recyclables beyond the base contract exhibit for recyclables? If so, please provide a list of desired items.	As this is an RFP, any additional services that a Proposer proposes will be considered during proposal scoring. Additional materials, beyond the minimum, would be viewed favorably as long as they make a meaningful contribution to the City’s diversion program and that the collection materials are recycled or reused.	No change.
11.	RFP §2.11(4C)	Waste Management	7 th bullet: Does the City desire any specific or additional multifamily education and outreach that is not already included in the draft contract? If so, please provide.	No.	No change.
12.	RFP §2.11.2	Waste Management	Please provide the names and titles of the City’s proposal review committee.	The proposal review committee will be assigned by the City Manager or designee prior to the start of the proposal evaluation process. No staff list is available at this time.	No changes.
13.	RFP §2.16	Waste Management	The point at which Proponents are released from the communications restrictions is typically upon staff recommendation of Selected Proposer to City Council as evidenced in the City Council’s public Agenda Packet. The “and/or” reference in this Section suggests the restriction could be held in place until a Contract is finalized. Please clarify the City’s meaning and intent with regards to the restricted communications timing.	Two different Council award processes will be considered: (1) the highest scored proponent will be determined by staff, a contract finalized, and the final contract/rate package presented to Council in one round; or (2) the highest scored proponent will be determined by staff; the selection will be presented to Council, and upon Council assent, a final contract/rate package will brought back to the Council. Area cities have used both approaches. The City will determine its preferred approach based on the Council workload at the time and Council preferences.	No changes.
14.	RFP §3.2	Waste Management	Please disseminate forms in word and excel, for ease of filling in with required information and data points.	The final RFP will be distributed in MS Office format.	No changes.
15.	RFP Form 2	Waste Management	There is an incongruent reference to Appendix Form 2. In this Section, it states it will be attached as Appendix D. However, the Appendices page states it is listed as	The final RFP attachment sequences will be checked prior to release.	The RFP has been revised.

			Appendix C.		
16.	RFP Form 2, Section 2	Waste Management	Would the City be amenable to altering the ‘at minimum’ list of acceptable recyclables at the Customer Service and Recycling Center, with a statement to the effect of ‘additional items may be accepted over course of Contract’? Flexible language allows for modifications and changes over time, as may be desired by the City and the successful bidder.	For the purposes of a competitive procurement, the City prefers to have a clear minimum list of recyclables that will be handled by the contractor so that all proponents are using the same list. As a practical matter, the City intends that the list may be expanded over the course of the contract as additional materials become recyclable and will work with the contractor to monitor emerging markets and opportunities for program expansion.	No changes.
17.	Contract – Table of Contents	Republic Services	Correct technical error. Update the table of contents so that it includes Section 3.3.3.	A new table of contents will be generated for the final versions of both the RFP and Draft Contract.	The RFP has been revised.
18.	Contract – Definitions – Change of Control	Republic Services	<p>Definition needs to be one that applies to transactions by which a change in controlling interest in the Contractor is accomplished. Changes in control resulting from public trading of shares should be excluded from the definition.</p> <p><i>Change definition to read:</i></p> <p>Change of Control: The term “Change of Control” means any single transaction or series of related transactions by which the beneficial ownership of more than 50% of the voting securities of the Contractor is acquired by a person or entity, or by a related or affiliated group of persons or entities, who as of the effective date of the Contract do not have such a beneficial interest; provided, however, that intra-company transfers, such as transfers between different subsidiaries or branches of the parent corporation of the Contractor, or transfers to corporations, limited partnerships, or any other entity owned or controlled by the Contractor upon the effective date of the Contract, and transactions effected on any securities exchange registered with the U.S. Securities and Exchange Commission, shall not constitute a Change in Control.</p>	This is acceptable.	The definition has been changed.
19.	Contract – Definitions - City	Republic Services	<p>Revise definition for readability. Change definition to read:</p> <p>City: The word “City” means the City of Kirkland, in King County, Washington. As used in the Contract, use of the term “City” may include reference to the City Manager or his/her designated representative. Where the context makes it apparent, references to staff, streets, rights-of-way, activities and things refer to the staff, streets, rights-of-way and activities of the City, and things belonging to or located within the City.</p>	This is acceptable	The definition has been changed.
20.	Contract – Definitions - Customer	Republic Services	<p>All Kirkland users are considered to be “customers,” including multifamily tenants. This is a problem because if any tenant decides to change container sizes, order a bulky waste pickup, or order new services, the account holder will be charged.</p> <p><i>Change definition to read:</i></p> <p>Customer: All account-holders of the Contractor’s services within the City.</p>	This change is generally acceptable. The City will also add language addressing the potential for one-time, City-sponsored events.	The definition has been changed as requested together with a new reference to one-time account-holders at City-sponsored events.

21.	Contract – Definitions – Customer	Republic Services	Clerical error. The initial use of the work “provided” should be stricken, so that the sentence reads correctly.	This is acceptable.	The contract has been changed.
22.	Contract – Definitions – Day/Days	Republic Services	Clarity - Business days should be the default definition, unless otherwise specified. <i>Change definition to read:</i> Day/Days: Business days unless otherwise specified.	The City acknowledges that context is relevant when determining whether to use “business” or “calendar” days in a contract. For example, “business” day might make more sense when the context is the required service of a notice document, but “calendar” day might make more sense in many other contexts, such as measuring the duration of continuing defaults, strikes or force majeure events. With that noted, the City prefers a uniform approach and on balance prefers “calendar” days.	No change.
23.	Contract Definitions – Food Mini-Can	Waste Management	Would City consider a 20 to 25-gallon cart in lieu of the 13-gallon container? A 20 to 25-gallon cart would be consistent with automated collection whereas a 13-gallon container will require manual lifts, decreasing overall efficiencies and raising costs.	No.	No change.
24.	Contract – Definitions – Food Mini Can	Republic Services	The last sentence should be revised to make clear the Customer’s responsibility for daily maintenance of cans (Contractor will continue to replace broken containers). With food waste particularly, the Contractor could theoretically need to swap them weekly. <i>Revise the last sentence to read:</i> All Food Mini-cans shall be reasonably rodent-- and insect-proof when furnished by Contractor; but the responsibility for maintaining them in a sanitary condition shall rest with the Customers who use them.	Contract revised to read: All Food Mini-cans <i>provided by the Contractor</i> shall be rodent and insect proof and kept in sanitary conditions by <i>the Customer</i> .	The contract definition has been revised.
25.	Contract Definitions – Extra Unit	Waste Management	The City’s current rate sheet outlines an extra yard rate for commercial customers. No such allowance is contemplated in the draft Contract. Please consider adding, unless the City made an intentional shift to commercial extra units in 96- gallon increments only.	The Contract and rate sheet will be clarified to address extras in 32 gallon and one yard increments.	Final RFP edit
26.	Contract – Definitions – Garbage Can	Republic Services	Since Garbage Cans are supplied by the Customer, the last sentence should be revised to make clear the Customer’s responsibility for maintenance of sanitary cans. <i>Revise the last sentence to read:</i> Containers shall be reasonably rodent and insect-proof when furnished by Contractor; but the responsibility for maintaining them in a sanitary condition shall rest with the Customers who use them.	Contract revised to read: All Food Mini-cans <i>provided by the Contractor</i> shall be rodent and insect proof and kept in sanitary conditions by <i>the Customer</i> .	The contract definition has been revised.
27.	Contract – Definitions – Residence - Residential	Republic Services	Remove capitalization of “single-family” and “multifamily” to avoid use of undefined terms. <i>Change the definition to read:</i> A single-family and/or multifamily living space individually rented, leased or owned.	This is acceptable.	The contract definition has been revised.

28.	Contract – Definitions – Service Area	Republic Services	<p><i>If (as presently is the case with the draft contract) there are to be no provisions included as Section 3.1.2 that address annexation, then change the definition to read:</i></p> <p>The service boundaries indicated in Attachment A as of the Date of Commencement of Service. <i>If a Section 3.1.2 is added that addresses annexation, then the definition need not be changed.</i></p>	This is acceptable. Contract definition revised to: The service boundaries indicated in Attachment A as of the Date of Commencement of Service.	The contract definition has been revised.
29.	Contract – Definitions – Special Waste	Republic Services	This definition may be deleted, as the term “Special Waste” is not used in the draft agreement. Delete definition.	This is acceptable.	The contract definition has been deleted.
30.	Definitions – Yard Debris	Waste Management	Reusable plastic mesh bags would be considered a contaminant in the organics stream. Please delete the reference.	“Poly woven bags” are included because the City has an “Adopt-a-Drain Program” under which residents are provided with a free poly woven bag they use to collect leaves and debris from storm drains. The bags are set out next to compostables carts, emptied by the contractor and left behind after service. Residents are not charged for the extra yard debris if they sign up for the program but the City does pay the contractor for the collection and disposal.	No changes
31.	Contract - Term of Contract	Waste Management	Will the City consider mutual extensions instead of City unilateral options to extend? Mutual extensions represent a partnership, which is what WM desires to continue through a new contract with the City.	See comment #2	No changes.
32.	Contract §1	Republic Services	<p>To enable a late exercise of the City’s extension option to be given effect with the Contractor’s consent.</p> <p>Add the following final sentence: With the Contractor’s written consent, the requirement of 90 days’ prior notice of exercise of the City’s option to extend may be waived in any instance.</p>	This is acceptable.	The contract has been revised.
33.	Contract §3.1.1	Republic Services	<p>Remove final clause of sentence because it is superfluous (it repeats the definition of “Service Area”).</p> <p><i>Revise sentence to read:</i> The Contractor shall provide all Services pursuant to this Contract throughout the entire Service Area.</p>	This is acceptable.	The contract has been revised.
34.	Contract §3.1.1	Recology	Does the City anticipate any future growth through annexation?	There are no annexations anticipated during the term of the contract.	No change.
35.	Contract §3.1.2	Republic Services	Correct typographical error. Capitalize the word “the” at the start of the final sentence of the second paragraph.	This is acceptable	The error has been corrected.
36.	Contract §3.1.4	Recology	Does the City have additional information it could provide in terms of the Contractor’s expectations for reporting suspicious activity?	No. It is expected that drivers use their best judgment.	No changes.
37.	Contract §3.1.5	Republic Services	<p>Make the requirement in the second sentence for “fair criteria” subject to Contractor’s reasonable discretion and clarify the question to which the “criteria” are being applied.</p> <p>Revise sentence to read: In determining whether carryout service is appropriate, the Contractor shall use criteria that, in its reasonable discretion, are fair and meet</p>	While fairness and needs criteria are subject to the review and approval of the City, the City agrees such approval shall not be unreasonably withheld.	The contract has been revised.

			the needs of the City’s disabled residents.		
38.	Contract §3.1.7	Republic Services	Make use of “single-family” consistent with defined term “Single –Family Residence.” Make use of “Multifamily” consistent with defined term “Multifamily Complex.” Make use of “Drop Box Containers” consistent with defined term.	This is acceptable.	The usages have been updated.
39.	Contract §3.1.7	Waste Management	Lines 38 & 39 - Please quantify or define “reasonable accumulated” volumes of material.	This is intended to be a proportional amount reflecting the number of collection days missed.	No change.
40.	Contract §3.1.8	Republic Services	Clarify Contractor’s billing responsibilities with respect to Customers for whom Contractor has discontinued service. Revise final paragraph to read: With respect to Customers for whom the Contractor has discontinued service under this section, in its Billing Operations Plan the Contractor shall designate each such Customer at the lowest service level for that class of Customer, unless otherwise instructed in writing by the City.	This is partly acceptable. With the deletion of the word “continue” in line 19, the remaining language in lines 19 and 20 of Section 3.1.8 is clear in the opinion of the City..	The contract has been revised.
41.	Contract §3.1.8	Waste Management	Please clarify the City’s intent with discontinued customers in light of the City’s mandatory service ordinance.	A problematic or unreasonable customer may have their recycling or yard waste service discontinued for a period or indefinitely but customers will be required to maintain a minimum garbage service level to comply with Kirkland’s mandatory collection code. See comment #40.	No changes.
42.	Contract §3.1.9	Recology	Would the City be willing to change the 4pm notification for same day miss to earlier in the day? Such late notice, with only a small window to collect the customer afterward, may adversely impact operations.	This will be changed so that if notification is provided by 9 AM the following business day, then the recovery will be made that day.	Changes made in contract.
43.	Contract §3.1.9	Recology	§3.1.9 requires the Contractor to provide return trip service for free, unless it can prove it attempted collection but containers were not set out. Would GPS coordinates of the vehicle, combined with a driver note that containers were not set out, constitute sufficient proof?	Yes.	No change.
44.	Contract §3.1.11	Republic Services	Correct reference to attachment. Change the reference to the Attachment to read “Attachment F”	This is acceptable.	Reference changed in contract.
45.	Contract §3.1.12	Republic Services	Make use of “single family” consistent with the defined term “Single-Family Residence”. Change all instances of “Single-Family Residential” and “Single-Family,” standing alone, to read “Single-Family Residence.”	This is acceptable	Changes made in contract.
46.	Contract §3.1.12	Republic Services	Is it the City’s desire to regulate collection days for detachable containers or just individually billed cart collection? <i>Change the second sentence of the third paragraph of the section to read:</i> The Contractor shall obtain from the City written approval of a collection day change prior to Contractor’s notification of the Multifamily Complex customer or Commercial Customer, and of the form of any notice of such change to be given to affected Multifamily Complex or Commercial Customers, which approval the City shall not unreasonably withhold or delay.	This is partially acceptable, with exception of “or delay” phrase.	Requested change has been made to second sentence of the third paragraph of Section 3.1.12 with exception of phrase “or delay, which has not been added to the contract.
47.	Contract	Recology	Would the City work to accommodate route day changes if they result in increased efficiencies for the Contractor?	Likely. The City would balance customer inconvenience and a short	No change.

	§3.1.12			term increases in failure to set-out with the degree of contractor savings.	
48.	Contract §3.1.12	Waste Management	Please consider revising customer notification of collection day change to hauler's option of "robo-call and/or email" as notification via both methods may not be feasible if customer records do not include an email address.	Agreed. Will revise to "robo-call and/or email".	The contract has been revised.
49.	Contract §3.1.13	Republic Services	Make reference to "City" consistent with use throughout the Contract. Replace the word "Kirkland" in the fifth paragraph with the phrase "the City."	Agreed.	References changes in contract.
50.	Contract §3.1.13	Recology	Would the City consider introducing an emission standard as an alternative to the model year standard? We have certain vehicles that we could deploy in Kirkland that are not model year 2018, but they are relatively new and would likely meet any stated emissions standard. This could lead to savings.	For the purposes of comparing consistent proposals, all front-line trucks will need to meet the specification and back-up trucks may be older.	No change.
51.	Contract §3.1.13	Waste Management	The Contract seems to require new trucks at commencement of contract (initial term) and then again with any extension. Please confirm the City's intent.	The words "... the initial term of..." will be deleted in the first sentence of §3.1.13	Contract revisions as indicated.
52.	Contract §3.1.13	Recology	Would the City consider accommodating the Contractor's own truck numbering system? Doing so allows for better internal management and system integration.	The intention of the numbering requirements is to ensure that City staff and customers can easily identify a truck without needing to write down or photograph a 4-8 digit fleet number. This is important in the case where the observer is driving or otherwise occupied and would have difficulty recognizing and remembering a multiple digit fleet number without distraction. There may be other ways to instantly identify particular trucks and the City is willing to discuss alternative truck identification methods.	No change at this time.
53.	Contract §3.1.13	Recology	Would the City consider other means of documenting exceptions besides camera recording? This method, while doable, involves significant additional expense and may not be cost-effective.	Possibly.	No changes at this time
54.	Contract §3.1.14	Waste Management	The City's current contract provides for a 15-yard uncompacted service. Please consider adding to the new Contract.	Yes.	The contract has been revised.
55.	Contract §3.1.14.4	Recology	Would the City consider a different color scheme for carts? For example, in order to be more consistent with other cities in King County, blue for recycling, green for organics and grey or black for garbage.	Purchasing new carts and disposing on the current in-place inventory would be expensive and adversely impact ratepayers. Although the City agrees in principle with cart standardization, the costs are likely excessive. If a proponent believes that it would be cost-effective to replace all carts with a different color scheme, they may propose this approach and identify the associated costs or savings.	No change.
56.	Contract §3.1.14.1	Republic Services	Make reference to "City" consistent with use throughout the Contract. Replace the word "Kirkland" at the end of the second sentence of the third paragraph with the phrase "the City."	Agreed.	The contract has been revised.
57.	Contract §3.1.14.2	Republic Services	Clarity – so as not to leave the impression that the Contractor is assuming responsibility to the public for harm caused by a Customer's negligence or other fault. <i>Change the first sentence of the sixth paragraph of the section to read:</i> As between the Contractor and the City, Containers on Customers' premises are at	Agreed.	The contract has been revised.

			the Contractor’s risk and not the City’s.		
58.	Contract §3.1.14.3	Republic Services	<p>RCW 62A.2-316(2) requires a disclaimer of the implied warranty of merchantability to be conspicuous.</p> <p>Clarity – so as not to leave the impression that the City is assuming responsibility to the public or to a successor contractor for harm caused by a Customer’s negligence or other fault.</p> <p>Change the last paragraph of the section to read:</p> <p>The City in advance accepts all such Containers in their “as-is, where-is” condition and without any express or implied warranty by the Contractor of any kind, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE OR ANY WARRANTY OF MERCHANTABILITY. As between the City and the Contractor, the City assumes all risks of loss or liability on account of the City’s exercise of its rights under this Section 3.1.15.3 or any use made of any such Containers after they become the property of the City or assignee of the City.</p>	Agreed.	The contract has been revised.
59.	Contract §3.1.14.5	Republic Services	<p>Greater specificity.</p> <p><i>Change the provision to read:</i></p> <p>The Contractor shall not be required to collect materials from any Container exceeding the safe working capacity of the Container, of any lifting mechanism or collection vehicle. For Drop-box Containers, the combined weight of the Drop-Box and contents must not cause the collection vehicle to exceed legal road weight limits. Garbage Carts exceeding two (2) pounds per gallon of Container capacity, and Garbage Cans exceeding fifty-five (55) pounds, shall be deemed to exceed the permitted weight. If the Contractor declines to collect overweight materials in any instance, the Contractor shall tag the Container with an explanation.</p>	Container weight allowances vary by manufacturer. The Contractor to whom the contract is awarded may dictate weight limitations based upon the individual Container limitations in its inventory. The proposed weight limitation will be difficult to enforce as vehicles are not equipped with scales.	No change.
60.	Contract §3.1.16	Republic Services	<p>Clarify that leakage or spillage “may” be subject to fines under the City code.</p> <p><i>Change the third sentence of the second paragraph to read:</i></p> <p>Leakage or spillage not immediately cleaned up or removed by the Contractor shall be cause for performance fees, as described in Section 5.1, and may be subject to fines pursuant to KMC 15.52 and 1.12.</p>	This is acceptable.	The contract has been revised.
61.	Contract §3.1.16	Recology	We suggest specifying which requirements apply to spillage of solid waste during collection, and which apply to leakage or spillage of oil, hydraulic fluid, or similar toxic liquids. It doesn’t seem necessary for the Contractor to photograph the spill, notify the spill hotline, and notify the City within 3 hours, unless it is a leakage or spill of such liquids.	<p>The following language has been revised:</p> <p>Any leakage or spillage of materials upon the road surface or exposed appurtenances that occurs during collection shall be immediately cleaned up or removed by the Contractor at its sole expense. Any spillage or leakage entering the City Municipal Storm System shall be cleaned solely by City staff and the Contractor shall be billed for said cleaning services.</p>	The contract has been revised.
62.	Contract §3.1.17	Republic Services	Duty to negotiate in good faith should be reciprocal. Change the last sentence of the first paragraph of the section to read:	Agreed.	The contract has been revised.

			If the City deems the pilot a success, and desires to incorporate the service or development represented in the pilot program in the terms of this Contract, the Contractor and The City each agrees to negotiate in good faith and in accordance with Section 7.14 to include the provisions of the pilot program into this Contract, including any costs or savings to be accrued.		
63.	Contract §3.1.18	Recology	Some accommodation is usually necessary when construction disrupts access, so we suggest revising the second sentence as follows: “However, the Contractor and City shall, <u>develop a reasonable workaround to enable the Contractor to</u> by the most expedient manner, continue to collect Garbage, Recyclables, and Compostables to the <u>nearest same extent possible</u> as though no interference existed upon the streets or alleys normally traversed.”	This is acceptable.	The contract has been revised.
64.	Contract §3.1.19	Republic Services	Strike contingency plans are confidential information, the disclosure of which could operate to the disadvantage of both The City and the Contractor. Language should be added that requires information furnished by the Contractor pursuant to Section 3.1.20 to be maintained by The City in confidence to the maximum permissible extent. Add the following new paragraph at the end of the section: Any Strike Contingency Plan or other information communicated by the Contractor to the City pursuant to this section shall be maintained in confidence by the City to the maximum permissible extent under applicable law.	Agreed.	The contract has been revised.
65.	Contract §3.1.19	Waste Management	Please consider lowering the monetary fines so they are not punitive and include a 7-day grace period for reasonable recovery efforts before punitive measures are applied.	The fee levels will be retained. If there is significant value to lower fees, please identify through the contract exception process.	No change.
66.	Contract §3.1.19	Recology	While we take pride in our relationships with our labor partners, the amounts outlined in this section could put the Contractor in a difficult negotiating position for future labor agreements. This could potentially lead to labor costs rising faster than inflation and require the Contractor to build in additional costs to accommodate for this. Would the City consider lowering these amounts to the following: \$3K/day for City cost reimbursement, plus performance fees of \$5K/day for days 1-7, \$10K/day for days 8-14, \$15K/day for days 15+.	See Comment #65, above.	No change.
67.	Contract §3.1.23	Republic Services	To correct grammatical errors. Change the first sentence to read: For initial hiring under this Contract, the Contractor and subcontractors shall actively recruit and give hiring preference to any Garbage, Recyclables, or Compostables (including Yard Debris) collection workers who serviced City or the City routes for the previous hauler at the time that the previous collections contract(s) expired and have been displaced as a result of the City awarding this Contract, provided that such workers are fully qualified and meet the Contractor’s standards for employment.	Minor wording changes to reflect that the City currently has one collection contract.	The contract has been revised.
68.	Contract §3.1.23	Recology	So that bidders can price their proposals accurately, and so that all bidders are using the same information, could the City please provide the number of displaced employees, their average wage rates, and the types of benefits and average accruals that would need to be carried over?	The City is unable to guess which drivers may choose to switch companies. We hope that Proposers have experience in contract transitions in this market and can make educated assumptions on these items.	No changes.

69.	Contract §3.1.24	Republic Services	<p>Provisions allowing the City to exercise its option to carry out performance reviews should provide for reasonable notice to Contractor. Change the first sentence of the first paragraph to read:</p> <p>The City may, at its option and upon reasonable notice to the Contractor, conduct a review of the Contractor’s performance under this Contract.</p> <p>Change the first sentence of the final paragraph to read:</p> <p>The City may, at its option and upon reasonable notice to the Contractor, design and implement an alternative annual Contract compliance monitoring program with or without Contractor performance incentives. If such a program is desired by the City, the City and Contractor agree to negotiate in good faith the monitoring methodologies used to ensure accurate and unbiased sampling of performance data.</p>	This is acceptable.	The contract has been revised.
70.	Contract §3.1.24	Republic Services	<p>Language should be added to provide that the cost of new processes or systems recommended in a performance review are Contractor’s expense only if they are for the purpose of addressing failures to comply.</p> <p>Revise the third paragraph to read as follows:</p> <p>The costs of the development and implementation of any action plan required under this Section 3.1.24 or Section 5.1 for the purpose of addressing failures on the part of Contractor to perform in accordance with the terms and conditions of this Contract shall be paid for solely by the Contractor, and the costs of developing or implementing such action plan may not be passed on to Customers or the City, or included in rates or fees charged Customers.</p>	Agreed.	The contract has been revised.
71.	Contract §3.1.24	Republic Services	<p>Clarify – In order to build rates, the contract should include a maximum amount the Contractor would be expected to bear in performance of the alternative annual Contract compliance monitoring program. Revise the last sentence of the section to read:</p> <p>The City shall bear the costs of staff, City-retained consultants and performance incentives (if used) and the Contractor shall bear up to \$_____ in the costs of staff and route costs to perform the monitoring.</p>	The City does not believe a limit is necessary or appropriate under this section as a limit may impact the quality of the alternative Contract compliance monitoring program.	No change.
72.	Contract §3.1.26	Republic Services	<p>Language should be added that provides that title to Hazardous Waste and other hazardous materials included in any waste received by the Contractor does not pass to the Contractor.</p> <p>Add the following as a new fourth (next to last) paragraph in the section:</p> <p>Title to and liability for any Hazardous Waste , or for other materials or substances that are either restricted from disposal or would pose a danger to collection crews (including but not limited to any household Hazardous Waste and small quantity generator Hazardous Waste, special waste, and radioactive material) or the environment and that are included with any materials collected under this Contract by Contractor despite The City’s and Contractor’s attempts to prevent the inclusion of such materials shall not pass to Contractor, but shall remain with the party from whom such Hazardous Waste or any such other materials or substances is received.</p>	Agreed.	The contract has been revised.

73.	Contract §3.1.26	Republic Services	<p>Provide that City will give Contractor reasonable notice regarding delivery of Garbage for waste composition analysis and Contractor will make reasonable commercial efforts to coordinate as to delivery.</p> <p>Revise the first sentence of the current fourth paragraph to read:</p> <p>In the event that the City wishes to conduct a waste composition analysis, the Contractor shall, upon reasonable notice from the City, deliver collected Garbage from one or more routes to the designated sorting site and shall use reasonable commercial efforts to coordinate with the City’s consultant to ensure successful sampling.</p>	<p>Agreed to in part and denied in part. The City will agree to provide reasonable notice, but the Contactor must coordinate with the City, rather than simply exercising its best efforts to do so. Reference to “City’s consultant” has been amended to “City.”</p>	The contract has been revised..
74.	Contract §3.1.26	Republic Services	<p>Contractor should be permitted to engage in recovery of recyclable materials, consistently with the King County Disposal System.</p> <p>Add the following additional final paragraph:</p> <p>Garbage collected by the Contractor may be processed to recover recyclable material, provided that the residual is disposed in accordance with the King County Disposal System as it currently exists as of the Date of Execution of this Contract or as thereafter amended, or as otherwise directed by The City in writing, and the Contractor receives prior written approval from the City of the Contractor’s procedures and policies for diverting Garbage for processing. In the event the Contractor elects to haul Garbage to a private processing facility, the Contractor shall charge the Customer no more than the equivalent Garbage disposal fee at a King County Disposal System transfer station, or such other disposal fee as the City reasonably directs the Contractor to use in writing, and shall charge hauling fees no higher than provided for in Attachment B.</p>	<p>The Concept is generally agreeable subject to alternative language below:.</p> <p>Garbage collected by the Contractor may be processed by the Contractor to recover recyclable material; provided, however, that the residual is appropriately disposed of within the King County Disposal System; provided, further, that such recyclable material processing is undertaken with the prior written approval of King County and the City and in accordance with the Amended and Restated Solid Waste Interlocal Agreement between King County and the City of Kirkland effective as of November 6, 2013; and provided, further, that the Contractor in all such instances shall charge Customers no more than the equivalent Garbage disposal fee at within the King County Disposal System or such other disposal fee as the City reasonably directs the Contractor to charge. In addition, hauling fees charged by the Contractor in such instances shall be no higher than those provided for in Attachment B.</p>	The contract has been revised.
75.	Contract §3.1.26	Recology	<p>We suggest revising as follows: “All Garbage collected under this Contract, as well as residues from processing Recyclables and Compostables <u>(to the extent required for City to comply with its solid waste Interlocal Agreement with the County)</u>, shall be delivered to the King County Disposal System, unless otherwise directed in writing by the City.”</p>	This is acceptable.	The contract has been changed.
76.	Contract §3.1.27	Republic Services	<p>Clarify that Contractor’s obligation as to a separate billing agent addendum is to work with the City to enter into such an addendum in the event the City elects to pay disposal fees directly.</p> <p>Change the fourth listed item to read:</p> <p>Negotiate and formalize with the City a separate billing agent addendum to this Contract which details the financial and legal relationship between the Contractor (billing agent) and the City (client), including how receivables are handled and how the City handles disbursement to the Contractor and the County;</p>	This is acceptable.	The contract has been revised.
77.	Contract §3.1.27	Republic Services	<p>To enlarge and/or clarify the scope of indemnification provided by the City.</p> <p>Change the last paragraph to read:</p>	<p>Agreed with the following amendatory language after “provided” in the suggested changes to the last paragraph: “...that the Contractor has fully complied with the requirements of this Section 3.1.27,</p>	The contract has been revised.

			If the City elects to pay disposal directly, the City releases and shall indemnify and hold harmless the Contractor from financial and legal responsibility for disposal payments for City Garbage (and on account of any taxes or fees related thereto, as well as third-party claims therefor, the expense associated with defense of any such claims, including reasonable attorneys’ fees), provided that the Garbage has been collected only from applicable City Customers in accordance with this Contract.	including with respect to the collection of Garbage from City Customers only and not in any event from customers in other jurisdictions.”	
78.	Contract §3.1.27	Republic Services	Clarify that the extent of the City’s right to decide to pay King County directly is as set forth in this section, and that any request to participate in a weight study must include notice. Change item 6 of the list to read: Independent of the City’s decision on disposal cost payment as set forth in this section , the Contractor shall participate upon request in a City-funded and managed Container weight study to be conducted no more than once every three years during the period of the Contract, the results of which will be used to update the disposal components listed in Attachment B of this Contract. The City shall give reasonable notice of such weight studies.	This proposed change is unnecessary. The obligation to participate in a weight study is intended to apply only in the event the City elects to pay disposal fees directly to King County.	No changes.
79.	Contract §3.2.1.2	Republic Services	Clarity – This section says that containers are provided at no charge. We assume that was intended as initial deliver, but redelivery after bad debt could carry a fee. We request that Attachment B include a line item for various redelivery fees. Also, please consider limiting the number of free deliveries for cart resizing and requested cleanings. These user-based fees help us better determine initial rates. Change first sentence to read: The Contractor shall provide collection Containers to Customers at no charge, except where noted in Attachment B.	Although this is a reasonable request for a non-mandatory City, the combination of mandatory collection and City billing minimizes the number of potential events where containers are pulled due to bad debt, making additional fees unnecessary.	No changes.
80.	Contract §3.2.1.3	Republic Services	Provide for reasonable notice to Contractor by Customers choosing not to be charged for overweight or extra Containers. Change final sentence of last paragraph to read: Upon reasonable notice to the Contractor , Customers may specify that they may not be charged for overweight or extra Containers, in which case any such Containers shall be left at the Curb uncollected and tagged with written notification as to why it was not collected.	The City is not prepared to purport to impose “reasonableness” terms onto third parties such as customers.	No changes.
81.	Contract §3.2.1.1 and §3.2.4.1	Recology	These sections Contractor to collect all Garbage set out “adjacent to” or “next to” Garbage containers. This could be read as requiring the Contractor to clean up customer-spilled Garbage, or improperly set out Garbage. We suggest revising so it’s clear that Garbage set out next to a container must be properly prepared in accordance with the contract requirements.	The City does not expect the Contractor to pick up incidental litter. The Contractor is required to pick-up all Garbage set out next to a customer’s container that is property prepared in accordance with the definition of Garbage and any materials spilled by the Contractor during service.	No changes.
82.	Contract §3.2.2.2	Waste Management	The reference to a 32-gallon cart should be changed to a 35-gallon cart to align to Section 3.1.2.3.	This is acceptable.	The contract has been changed.
83.	Contract §3.2.3.2	Republic Services	Limit City’s right to approve fee for cleaning of Compostables Containers. Change second-to-last paragraph to read:	This rate will be established in the RFP.	RFP Form 2 revision.

			The Contractor shall provide an on-call fee-based Compostables Container cleaning service to Customers at the rate established by the Contractor in its reasonable discretion and approved by the City (such approval not to be unreasonably withheld, delayed or conditioned).		
84.	Contract §3.2.2.2 and §3.2.3.2	Recology	These sections seemingly allow customers to request a “replacement” cart or “reject” a cart. Please clarify the intent of this language. Our experience is that carts are only replaced if the Contractor determines they have been damaged.	<p>If a customer’s cart has been damaged, the customer may request a replacement cart. For example, a cart might have been damaged during collection without the driver noticing. In that event, the customer might notice the damage and request a replacement.</p> <p>The “rejected” cart refers to a garbage customer who initially refuses to have a recycling cart and demands that the contractor remove it. That customer may change their mind over time or a future resident may request a recycling cart and the contractor is required to redeliver a cart at no additional charge.</p>	No changes.
85.	Contract §3.2.3.2	Waste Management	Same as above. The reference to a 32-gallon cart should be changed to a 35-gallon cart to align to Section 3.1.2.3.	This is acceptable.	The contract has been changed.
86.	Contract §3.2.3.3	Republic Services	<p>Clarify that the provisions for the timing for collection from Multifamily Complexes north of Forbes Drive applies to Christmas tree collection.</p> <p>Change last sentence of second paragraph to read:</p> <p>Collection of Christmas trees in the case of Multifamily Complexes north of Forbes Creek Drive/NE 116th St shall occur on Mondays and Thursdays and south of Forbes Creek Drive/NE 116th St on Tuesdays and Fridays unless an alternative collection schedule is approved by the City.</p>	This is acceptable	The contract has been revised.
87.	Contract §3.2.4.3	Republic Services	Avoid use of undefined capitalized term. Remove the capitalization from the word “roll-out” in the third sentence of second paragraph.	This is acceptable	The contract has been revised.
88.	Contract §3.2.4.3	Republic Services	<p>Language should be added that would allow charge for wait times or use of specialized Contractor equipment in cases where Containers are not accessible.</p> <p>Add at the end of the second paragraph of this section the following sentence, and include allowance for such charges in Attachment B:</p> <p>Customers with hard-to-access Containers requiring the Contractor to wait for Customer Container relocation or requiring Contractor’s use of specialized equipment for Container relocation may charge those Customers additional access fees and/or hourly fees consistent with Attachment B.</p>	This is acceptable.	The contract has been revised.
89.	Contract §3.2.4.3	Republic Services	<p>The City should not be permitted to “direct” that Customers who ask for and receive extra collections be exempted from paying for them.</p> <p>Revise the last paragraph of the section to read:</p> <p>Multifamily Complex and Commercial Garbage Customers may request extra collections, and shall pay for such extra collections an additional amount proportionate with their regular monthly rate for the extra collection service provided by Contractor.</p>	<p>Clarification provided. Reference is to a City retail rate as established by the City.</p> <p>Multifamily Complex and Commercial Garbage may request extra collections and shall pay a proportional amount of their regular monthly rate for that service as directed established by the City.</p>	Contract has been revised.

90.	Contract §3.2.5.2	Republic Services	<p>Language should be added that would allow Containers for Recyclables to be rejected if they contain non-Recyclables or Excluded Materials.</p> <p>Add at the end of the section:</p> <p>The Contractor may decline to collect Recyclables if the Container in which they are placed by the Customer contains Excluded Materials or other materials that do not conform to the definition of Recyclables or that do not meet Specifications.</p>	Agreed.	Contract has been revised.
91.	Contract §3.2.6	Waste Management	Lines 16 to 19. Please clarify the roles and responsibilities in execution of the multifamily and commercial education and outreach program. Which items are expected to be borne by the Contractor and which by the City?	The contract will be revised as follows: The Contractor shall provide Cart-based Compostables collection services upon the City's approval to requesting Multifamily Complexes and Commercial Customers. using Detachable Containers for Garbage service. The City's role will be to approve multifamily and commercial customer applications for composting service. The City will forward approved service requests to the Contractor for fulfillment and will be responsible for all customer and tenant education, outreach, and material assistance.	Contract has been revised.
92.	Contract §3.2.6.2	Waste Management	Please include a definition for the food mini-can and list it as an option with all other cart sizes listed in various locations within the Contract.	The definition already exists in the draft contract. However, Section 3.1.14.1 has been revised to specifically address Food Mini-cans in a manner consistent with carts.	The contract has been revised.
93.	Contract §3.2.6.2	Waste Management	Lines 43 & 44. The Contract language seems to require City approval on container placement location with multifamily and commercial customers. Please clarify the City's intent and change the Contract language to reflect such intent.	That is correct. The City actively manages the review and approval process for multifamily composting service. Customers wishing to obtain the service must have a site visit by City staff to determine container placement and appropriate service levels. The contract language reflects this.	No change.
94.	Contract §3.2.6.2	Republic Services	Make use of term "Multifamily" consistent with use throughout the Contract. Change start of last paragraph to read "For Multifamily Complex Customers..."	This is acceptable.	Contract has been revised.
95.	Contract §3.2.6	Recology	Could the City please provide details about the requirements for Multi-Family and Commercial customers to receive Compostables service? How long does the City's approval process normally take?	More information of the City's approval process can be reviewed at http://www.kirklandwa.gov/depart/Public_Works/solidwaste/Multi-family/Compost/Multi-family_Compost_Collection_Service_Application.htm . The length of the approval process varies is dependent upon the responsiveness of the applicant and the ability for staff to make a timely site visit.	No change.
96.	Contract §3.2.7	Waste Management	Please confirm unlimited recycling does not apply to Drop box customers.	It does apply to permanent Drop Box customers. All customers (as the term is defined in the contract) are eligible for the specified recycling services.	No changes.
97.	Contract §3.2.7.3	Republic Services	Customers who receive drop box collection service should not have the right to dictate where waste collected from them is to be delivered. If a customer requests delivery to a specified disposal facility that is more distant than the nearest King County disposal facility, and if the Contractor is not precluded by the Contract from delivering to that facility and consents to do so, the Contractor should have the right to charge for the additional time and/or mileage as long as	Although the proposed language revision this is acceptable, the first sentence of the comment does not reflect the City's expectations. If a warehouse customer with a particular load that is pallets and wood dunnage wishes to direct that materials to a recycling facility, then the City intends that they have that option, contingent on paying additional time or mileage fees. Obviously, they could also	The contract has been revised.

			<p>the Contractor has advised the Customer as to the basis of such charges before the delivery is effected. A Customer who knows what it is to be charged in such a case should be treated as having consented to the charge.</p> <p>Change the last sentence of the last paragraph of the section to read:</p> <p>The Contractor may charge additional time and/or mileage only if (1) the Customer requests that Contractor deliver material to a facility other than the closest King County disposal facility, (2) the facility is one to which the Contractor is free to deliver the material under this Contract, and (3) Contractor delivers the material to such facility after advising the Customer in writing as to the basis of the additional time and/or mileage charges to be payable by the Customer on account of such delivery(ies).</p>	contract for a recycler to provide the service outside of the City’s contract, but there may be instances where a customer has only an occasional load of relatively pure materials that they prefer be recycled.	
98.	Contract §3.2.10	Recology	We suggest clarifying that the Contactor is only required to maintain containers, compactors and kiosks that are owned by the City or leased from the Contractor. It would be unusual and difficult for the Contractor to service equipment that is leased by the City from a third party.	Amend sentence to: Containers, compactors and kiosks owned by or leased from the Contractor shall be maintained and serviced by the Contractor in accordance with the manufacturer’s recommendations and costs of any service agreements shall be borne by the Contractor.	The contract has been revised.
99.	Contract §3.2.10	Recology	Please provide the number and size of containers to be serviced at each City facility, and the frequency of service.	Will amend table to show current service levels for each facility.	The contract has been revised.
100.	Contract §3.2.10	Recology	Please provide a limit on the number of receptacles and kiosks that can be added by the City each year.	A limit has been provided in the contract.	The contract has been revised.
101.	Contract §3.2.10	Republic Services	<p>Clarity – so as to make it clear that where Garbage is generated through the performance of services for the City outside of the normal course of the operation of a municipal facility, the Contractor may charge for collection of such Garbage.</p> <p>Tenants of the City should not expect to receive free disposal service simply because they occupy municipal properties, unless the occupant is operating the facility as a contractor of the City.</p> <p>Add a new paragraph at the end of the section, to read:</p> <p>In cases in which Garbage, Recyclables or Compostables is generated through the performance by third parties of services for the City outside of the normal operation of a municipal facility, Contractor may charge for the collection of such materials in accordance with charges listed in Attachment B. For example, the city would pay Contractor for the disposal of debris generated by the replacement of the roof of a City facility. Regular Garbage, Recyclables and Compostables generated on an ongoing basis at all City facilities in the ordinary course of their operations otherwise will be collected by the Contractor without charge to the City. Tenants or other occupants of a municipal facility, other than those who operate the facility as a contractor of the City, shall not be entitled to the free service provided for by this section, but may be charged by Contractor in accordance with this Contract for the collection from them of Garbage, Recyclables and Compostables.</p>	<p>Agreed, with the following slightly modified version:</p> <p>In cases in which Garbage, Recyclables or Compostables are generated through the performance by third parties of services for the City outside of the normal operation of a municipal facility, Contractor may charge for the collection of such materials in accordance with charges listed in Attachment B. For example, the City could be required by the Contractor to pay for the disposal of debris generated by the replacement of the roof of a City facility. Regular Garbage, Recyclables and Compostables generated on an ongoing basis at all City facilities in the ordinary course of their operations, however, whether generated by staff or third parties (e.g. janitorial contractor) will be collected by the Contractor without charge to the City. Tenants or other occupants of a municipal facility, other than those who operate the facility as a City contractor of municipal services may be charged by Contractor in accordance with this Contract for the collection from them of associated Garbage, Recyclables and Compostables.</p>	The contract has been revised.
102.	Contract	Waste	Lines 2 to 6. Please consider adding a 10% cap to free services at City facilities and parks. Also, please clarify 3 rd party garbage, recycling and compost is not subject to	A limit has been provided in the contract. Third party waste will not be considered “City” waste subject to free service and the contract	The contract has been revised.

	§3.2.10	Management	the free service allowance.	language will be clarified per comment #101.	
103.	Contract §3.2.11	Waste Management	It is difficult to establish pricing on unlimited service for events. Please consider establishing a threshold of service per event based on the service level from previous year.	The City has revised its events servicing language.	The contract has been revised.
104.	Contract §3.2.11	Republic Services	Add language to clarify that “special events” has the meaning given in this section. Revise the first sentence of the first paragraph to read: The Contractor shall provide Garbage and Recycling services for City-sponsored special events, as such events are defined in this Section 3.2.11, at no charge to the City or users.	See comment #103.	As above.
105.	Contract §3.3.1	Republic Services	Make various terms consistent with use of such terms throughout the Contract. Change the phrase “Commercial and Multifamily customer” to “Commercial and Multifamily Complex Customer.” Change the phrase “Single-Family Residential” to “Single-Family Residence Customer.”	This is acceptable	Contract has been revised.
106.	Contract §3.3.2.4	Republic Services	Clarity – We assume the City desires “one-call resolution” to most customers who call our customer service center. If we need to put a customer on hold to solve a more complex issue, the ensuing hold time may be more (cumulatively) than two minutes. Revise the second sentence of the first paragraph to read: If a Customer service representative is able to take multiple incoming calls, then telephone calls shall not be placed on hold from more than two (2) minutes, and on a monthly basis, no more than 10% of incoming telephone calls shall be placed on hold for more than twenty (20) seconds. If Customer service representatives handle one incoming call at a time, then the representatives will strive for one-call resolution, and hold time will not be penalized.	The City prefers “one-call” resolution to the extent possible and recognizes that customer service center staff may need to place customer on hold to resolve complex issues. The City is amendable to revising the contract to allow for multiple hold occurrences to resolve said issues: No telephone calls shall be placed on hold for more than two (2) minutes per occurrence , and on a monthly basis, no more than 10% of incoming telephone calls shall be place on hold for more than twenty (20) seconds.	The contract has been revised.
107.	Contract §3.3.2.6	Republic Services	If selected, Republic Services reserves the right to discuss this section to make Contractor-specific changes.	Please outline your suggested changes in your proposal and identify as contract exceptions.	No changes.
108.	Contract §3.3.3.1 and §3.3.3.2	Recology	What is the difference between “City Cost” and “Contractor Cost”? Since these sections require the Contractor to submit the City Cost to City, how will the Contractor know what the City Cost is?	The terminology will be reviewed and clarified in the final contract to distinguish between “wholesale” rates to the City and “retail” rates to the customer.	The contract has been revised.
109.	Contract §3.3.2.4	Waste Management	This section requires ASA of less than 30 seconds yet Section 3.3.4.1(3) references less than 20 seconds. Please clarify the City’s desired standard.	The first reference in Section 3.3.4.1(3) should be 30 seconds.	The contract has been revised.
110.	Contract §3.3.2.8	Republic Services	Add “billing” communications to the exclusion for review by the City of communications. Change the first sentence of the first paragraph to read: All Customer communications (other than routine service and billing interactions with individual Customers) shall be reviewed and approved by the City before distribution.	This is acceptable.	Contract has been revised.
111.	Contract §3.3.2.8	Republic Services	Add language to provide that City shall not be unreasonable in its review and approval of communications with customers. Add the following sentence at the end of the first paragraph.	The City needs broad discretion regarding the approval of the content of non-routine commercial communications between the Contractor and City Customers. The City does not want to establish a contract-based dynamic that creates the potential for conflict over	No changes.

			The City’s approval of such communications shall not unreasonably be withheld.	“reasonableness” in this context.	
112.	Contract §3.3.3.1	Republic Services	<p>Make use of terms consistent with its use throughout the Contract.</p> <p>Change all instances of “single family residential,” “residential,” “single family customers” and “residential customers,” including in the section title, to “Single-Family Residence Customer” or “Single-Family Residence Customers.” Capitalize all instances of the word “Customer.”</p> <p>Change all instances of “multifamily” to “Multifamily Complex.”</p> <p>Capitalize all instances of the word “Commercial.”</p>	This is acceptable.	The contract has been revised.
113.	Contract §3.3.3.1	Republic Services	Correct reference in sub-section A of the section to refer to Attachment B. Change the phrase “as listed in Attachment C” to “as listed in Attachment B.”	This is acceptable.	The contract has been revised.
114.	Contract §3.3.3.1	Republic Services	Remove undefined term in sub-section A. Change “City Utility Billing staff” to “City utility billing staff.”	Utility Billing is a proper noun and a division of the Finance Department and so it should remain capitalized.	No changes.
115.	Contract §3.3.3.1	Republic Services	<p>Correct typographical error and clarify timing in sub-section B. Revise the first sentence of the first paragraph of sub-section B to read:</p> <p>The Contractor shall submit by 8:00AM on the Wednesday of each week, and on the second day of each month, a text file of “extra” charges, both for extra bags of Garbage and extra bags of Compostable materials, recorded during the previous week and month.</p>	This is acceptable.	The contract has been revised.
116.	Contract §3.3.3.2	Recology	We strive to protect the privacy of information that customers share with us. For this reason, we suggest making the following revision, so this sentence matches the similar sentence in §3.3.3: “The City shall have unlimited rights to use the Customer service database <u>for the purpose of</u> , including, but not limited to, developing targeted educational and outreach programs, analyzing service level shifts or rate impacts, and/or providing information to successor contractors.”	<p>The following sentence will be deleted: At the City’s request, the Contractor shall also provide the City with a copy of the full customer service database via e-mail on a monthly basis. The City shall have unlimited rights to use the customer service database to develop targeted educational programs, analyze service level shifts or rate impacts or to provide information to successor contractors.</p> <p>We already have this information in our billing system.</p>	The contract has been revised.
117.	Contract §3.3.4.1	Republic Services	Revise hold time requirements	Revised per comment response #106	Contract has been revised.
118.	Contract §3.3.4.1	Republic Services	<p>City’s ability to approve electronic format of monthly reports should be subject to reasonableness requirements. Revise the second sentence of the first paragraph to read:</p> <p>Reports shall be submitted in an electronic format approved by the City in its reasonable discretion, which approval shall not be unreasonably withheld, delayed or conditioned, and shall be certified as accurate by the Contractor.</p>	Reports to the City must be in an electronic format that works for the City throughout the Contract Term.	No changes.
119.	Contract §3.3.4.1	Republic Services	Remove capitalization of undefined term. In item 13 of the list, change “Local Hazardous Waste Management Program” to “local Hazardous Waste management program.”	The Local Hazardous Waste Management Program is a proper noun and should remain capitalized.	No changes.
120.	Contract §3.3.4.1	Republic Services	Make use of terms consistent with its use throughout the Contract. Change all instances of “single family residential,” “residential,” “single family customers” and “residential customers,” including in the section title, to “Single-Family Residence Customer” or “Single-Family Residence Customers.” Capitalize all instances of the	This is acceptable.	The contract has been updated.

			<p>word “Customer.”</p> <p>Change all instances of “multifamily” to “Multifamily Complex.”</p> <p>Capitalize all instances of the word “Commercial.”</p> <p>Change all instances of the word “Kirkland” to “the City.”</p>		
121.	Contract §3.3.4.1(7)	Recology	§3.3.4.1(7) requires the Contractor to report processing fees per ton in its monthly reports. This information is not needed for rate adjustment purposes and, if the Contractor is using an affiliated processing facility, is proprietary and confidential. We suggest not including this requirement.	This information is useful for the City to monitor market trends and to provide documentation in the event that extraordinary market conditions occur and require discussions between the Contractor and City.	No changes.
122.	Contract §3.3.4.2(6)	Waste Management	We do not record serial numbers for carts and containers. Would an annual report of Containers by size suffice?	Yes.	The contract has been revised.
123.	Contract §3.3.4.2	Republic Services	Serial numbers become problematic over time, especially when a neighborhood uses a common collection site. Neighbors can inadvertently reclaim the correct size (but wrong cart). Revise item #6 to remove serial number requirement.	This is acceptable. See comment #123.	The contract has been revised.
124.	Contract §3.3.4.3	Republic Services	<p>Clarity. Revise the section to read:</p> <p>3.3.4.3 Ad Hoc Reports</p> <p>The City may request from the Contractor up to twelve (12) ad-hoc reports each year, at no additional cost to the City; provided that such reports do not require the Contractor in the aggregate to expend more than two hundred (200) staff hours per year to complete. These reports may include Customer service database tabulations to identify specific service level or participation patterns or other similar information. Reports shall be provided in such format and with such software compatibility as reasonably may be specified by City.</p>	<p>Section has been revised to:</p> <p>The City may request from the Contractor up to twelve (12) ad-hoc reports each year, at no additional cost to the City. These reports may include Customer service database tabulations to identify specific service level or participation patterns or other similar information. Reports shall be provided in a City defined format and with Microsoft software compatibility. These reports shall not require the Contractor to expend more than two hundred (200) staff hours per year to complete.</p>	The contract has been revised.
125.	Contract Multiple	Recology	We noted several requirements to provide free or embedded services which, while doable, will result in higher rates. The City may wish to consider eliminating some of these services or enabling the Contractor to charge for them. These services include, but are not limited to: free winches for drop box covers (§3.1.14.2), “super recycler” SFD service with once-per-month collection of non-putrescible Garbage in 35g cart (§3.2.1.3), free container locks (§3.2.4.3), free lock and gate service (§3.2.4.3), development of a mobile app (§3.3.1), no automated call answering system (§3.3.2), website accessible in 4 foreign languages (§3.3.2.6), requirement to handle Styrofoam and textiles as recyclables (call-in not curbside) (Att. C).	Most of these services are either existing requirements or a basic service level consistent with quality service. The City prefers to keep these service level requirements intact.	No changes.
126.	Contract §3.3.5	Republic Services	<p>Add language to provide that City shall not be unreasonable in its review and approval of communications with customers. Revise the third sentence of the first paragraph to read:</p> <p>All written materials, Customer surveys and other communications provided to Customers generally by the Contractor (as opposed to routine communications with individual Customers) shall be approved in advance by the City, such approval not unreasonably to be withheld by the City.</p> <p>Revise the final phrase of the last sentence of the first paragraph to state “subject</p>	Denied. See comment to Section 3.3.2.8.	No changes.

			to City approval, such approval not unreasonably to be withheld by the City.”		
127.	Contract §3.3.5	Republic Services	Correct typographical error. Make use of terms consistent with its use throughout the Contract. Revise first sentence of second paragraph to begin “Each year, the Contractor shall print and deliver an annual comprehensive service guide to each Single-Family Residence Customer and Multifamily Complex Customer, which shall include....”	This is acceptable.	Contract has been revised.
128.	Contract §3.3.6	Republic Services	Transition to next Contractor – forfeiture of the performance bond should only happen for material failures to comply with this Section. Revise the last sentence in this section to read: Failure to materially comply with this Section 3.3.6 shall result in the forfeiture of the Contractor’s performance bond, at the City’s discretion.	Denied. A smooth, uninterrupted transition from contractor to contractor is essential to the City and it does not want to establish a contract-based dynamic that requires the City to prove to the Contractor – and to its surety – that failure to comply with this section was material.	No changes.
129.	Contract §4.1	Republic Services	Because Attachment B will separately identify the components, part of this section is redundant and may be confusing. It may make sense to remove the last sentence of the first paragraph and the entire list that follows it. Change the last sentence of the first paragraph to read: The charges provided in Attachment B, as such may be adjusted in accordance with this Contract, include the following components:	The City prefers the language largely as written, except as revised by Comment #130.	The contract has been revised.
130.	Contract §4.1	Recology	We suggest revising the 4 th sentence to read: <u>“The Contractor shall be compensated at the rates These charges provided in Attachment B, as such may be adjusted in accordance with this Contract, which rates are inclusive of the following costs include the following components:”</u> .	This is acceptable	The contract has been revised.
131.	Contract §4.1	Waste Management	In the City’s current contract the disposal fee component for Drop-box service could be established by certified load weight in tons multiplied by the King County tipping fee and a factor of 1.15. Will that same calculation be considered for this Contract?	Yes, a 15% mark-up on roll-off tonnage will be allowed.	The contract has been updated to reflect this allowance.
132.	Contract §4.1	Republic Services	Correct typographical error. Change “2.3.3.1(A)” to “3.3.3.1(A).” Make use of terms consistent with its use throughout the Contract. Change all instances of “single family residential,” “residential,” “single family” and “residential customers,” to “Single-Family Residence Customer” or “Single-Family Residence Customers.” Change all instances of “Multi-Family” and “Multifamily” to “Multifamily Complex.” Capitalize each instance of the word “customer” and “customers.”	This is acceptable.	Contract has been revised.
133.	Contract §4.1	Republic Services	Clarify Contractor’s direct invoice right. Change second sentence of second-to-last paragraph to read: Upon the City’s written approval, the Contractor may provide the requested services and, notwithstanding the provisions of Section 7.12, may be authorized to directly invoice the Customer the Contractor’s retail rate for those services. In no case shall the Contractor provide unauthorized services or charge unauthorized	This is acceptable.	Contract has been revised.

			rates.		
134.	Contract §4.2.1	Waste Management	In order to provide the City with the most financially attractive rates upon the commencement of the new contract, would the City consider an annual compensation escalator better aligned with haulers’ costs? Please consider amending the series to Consumer Price Index for All Urban Consumers: Water and sewer and trash collection services (CPI)(Series CWUR0000SEHG).	The City prefers to use the CPI-W (Seattle, Tacoma, Bremerton) index in §4.2.1 as it is most representative of the wage escalation received by our residents.	No change.
135.	Contract §4.2.3	Republic Services	<p>The section requires good faith negotiations, but it should require that there be an adjustment if a change is imposed by the City or other governmental authority on the Contractor.</p> <p>Change the first paragraph of the section to read:</p> <p>If the Contractor is required by the City or other governmental authority to use Garbage disposal or Compostables processing sites other than those being used at the initiation of this Contract, the Contractor shall submit a detailed proposal for the adjustment of the rates to reflect any additional cost or savings to the Contractor. The Contractor’s rates pursuant to this Contract in such a case shall be adjusted so as to pass through any resulting additional costs incurred by or savings to the Contractor. The City and Contractor agree to negotiate in good faith and to make any changes to the rates to accomplish a pass-through of any such costs or savings.</p>	<p>Accepted with modifications set forth below:</p> <p>If the Contractor is required by the City or other governmental authority to use Garbage disposal or Compostables processing sites other than those being used at the initiation of this Contract, the Contractor shall submit a detailed proposal for the adjustment of the rates to reflect any additional cost or savings to the Contractor. It is intended that the Contractor’s rates pursuant to this Contract in such a case will be adjusted so as to pass through any resulting additional costs incurred by the Contractor to the Contractor or any additional savings to the Contractor to the City. The City and Contractor agree to negotiate in good faith to make any changes to the rates to accomplish a pass-through of any such costs or savings.</p>	The contract has been revised.
136.	Contract §4.2.3	Republic Services	<p>Language should be added to permit Contractor to pass through increase in fees for Compostable collection and disposal. Add the following as a separate paragraph at the end of the section.</p> <p>Subject to City approval, which shall not unreasonably be withheld, the Contractor’s fee for collection and disposal of Compostables may be increased by Contractor to reflect any increase in the fee payable by Contractor to any third party for delivery or processing of Compostables, if and to the extent (but only if and to the extent) that such increase is attributable to any new taxes or tax increase, or to costs of compliance with new or amended federal, state or local laws, imposed upon the processor of such Compostables.</p>	The City cannot control fee increases with third parties it does not have contracts with.	No changes.
137.	Contract §4.2.4	Republic Services	<p>Clarity - the prohibition of this section should not apply in any instance in which another section of the Contract would permit an adjustment. Also, adjustments in County disposal rates should give rise to a concurrent adjustment in Contract rates.</p> <p>Revise the section to make the first paragraph read as follows and to include the following additional paragraphs between the first and second paragraph of the section as it currently reads; also include in Attachment D a hypothetical example of the adjustment contemplated by the following language:</p> <p>4.2.4 Other Modifications</p> <p>Except as otherwise expressly provided for by this Contract, Contractor shall not</p>	Accepted with revisions. Since billing is handled by the City through a utility fund, changes in wholesale rates to the Contractor do not necessarily correlate with changes in retail rates to the Customers, thus there is no need for the contract to anticipate and attempt to synchronize changes in contractor compensation with retail rate changes.	The contract has been revised.

			<p>adjust or modify rates due to employee wage increases, changes in Compostables processing fees, changes in commodity value, Garbage collection service level shifts, or other changes affecting the collection system.</p> <p>Periodic adjustments shall be made to Contractor collection rates to reflect increases or decreases in County disposal fees for Garbage. In the event of a change in County disposal fees, the disposal fee component of rates charged to Customers shall be adjusted, based on Container content weights specified by the Contractor in its proposal and included in Attachment B of this Contract. The parties shall cooperate in an effort to cause the effective date of adjustments in rates to Customers under this section to coincide in time as closely as reasonably practicable with the effective date of the change in County disposal fees.</p> <p>An example of rate modifications due to disposal fee changes is provided in Attachment E.</p>		
138.	Contract §4.2.4	Republic Services	<p>Clarify that the provision for “request” by Contractor for relief from compostable waste collection requirements for market failures of less than 9 months, and correct grammatical error. Correct section reference to “3.2.12” in second paragraph of section to be “3.1.11” (i.e., both references are to 3.1.11).</p> <p>Move the last paragraph so that it precedes what is now the second-to-last paragraph (i.e., swap their positions).</p>	This is acceptable.	The contract has been revised.
139.	Contract §4.2.5	Recology	<p>This section says that if governmental taxes or fees increase and that causes the Contractor’s costs to increase by more than \$10K/year, the City and Contractor will negotiate in good faith whether a compensation adjustment is appropriate. Under the stated circumstances, when would a compensation adjustment not be appropriate?</p>	For example, in the event that it is a temporary expense expected to change shortly or that there are other or associated contract savings that mitigate the effects of the increase.	No changes.
140.	Contract §4.2.5	Republic Services	<p>The section requires good faith negotiations, but it should require that there be an adjustment if new taxes or fees in excess of \$10,000, or new tolls, are imposed. In addition, the new taxes or fees that might trigger this provision should not be limited to state and local taxes or fees, but should include any federally-imposed taxes or fees.</p> <p>Revise the first paragraph of the section to read:</p> <p>4.2.5 New or Changes in Existing Taxes</p> <p>If new municipal, county, regional, Washington State or federal taxes or fees are imposed or the rates of existing taxes are changed after the Date of Execution of this Contract, and the impact of these changes results in increased or decreased Contractor costs in excess of ten thousand dollars (\$10,000) in the aggregate annually, or if road or bridge tolls are implemented that affect the Contractor’s operations under this Contract, the Contractor shall submit a detailed proposal for the adjustment of the rates to reflect any additional cost or savings to the Contractor. The Contractor’s rates pursuant to this Contract in such a case shall be adjusted so as to pass through any resulting additional costs incurred by or savings</p>	<p>Accepted with changes set forth below:</p> <p>If new municipal, county, regional, or Washington State taxes or fees are imposed, the rates of existing taxes (other than federal taxes) are changed, or new road or bridge tolls necessarily affecting the Contractor’s operations under this Contract imposed after the Date of Execution of this Contract, and the impact of these changes results in increased or decreased Contractor costs in excess of ten thousand dollars (\$10,000) in the aggregate annually, the Contractor shall submit a detailed proposal for the adjustment of the rates to reflect any additional costs or savings to the Contractor. It is intended that the Contractor’s rates pursuant to this Contract in such a case be adjusted so as to pass through any resulting additional costs incurred by the Contractor to the Contractor or any savings realized to the Contractor to the City. The Contractor and City shall enter into good faith negotiations to determine whether</p>	The contract has been revised.

			to the Contractor. The Contractor and City shall enter into good faith negotiations to determine whether compensation adjustments are appropriate for the amount exceeding the ten thousand dollar (\$10,000) threshold (in cases in which the threshold applies) and if so, to determine the amount and the method of adjustment.	compensation adjustments are appropriate for the amount exceeding the ten thousand dollar (\$10,000) aggregated threshold (in cases in which the threshold applies) and if so, to determine the amount and the method of adjustment.	
141.	Contract §4.2.6	Republic Services	<p>The provision is unfair and one-sided. It would require the Contractor to pass through every discrete cost savings even if the Contractor’s expenses in the aggregate are increasing. Just as it would not be fair to allow the Contractor to pass through discrete cost increases even if the Contractor’s expenses in the aggregate were to decline, the City should not expect cost savings to be passed through in such a fashion. A provision that requires the Contractor to assume the risk of all operational cost increases but the City to realize the benefit of any operational cost savings is not fair.</p> <p>Moreover, the section as drafted seems to apply no matter how trivial an item of expense saving might be, and would require the Contractor to keep track of all of its cost items, so as to determine whether and how much of a savings it may have realized. This is simply not practical.</p> <p>Delete the section in its entirety.</p>	This section has been revised to clarify that the sharing of savings is intended to compensate customers for changes to operations that either cause inconvenience or reconfigure service in way that impacts customers. This section is not intended to cover changes in operations that have no customer or City impacts and that are consistent with contract provisions.	The contract has been revised.
142.	Contract §4.3	Recology	The language could be interpreted as requiring the Contractor to bear all the risk for changes in law. Over an 8- to 12-year contract term, this is not reasonable, since changes in law are completely outside the Contractor’s control. To this end, we suggest the following edit: “Changes in federal, State, or local laws or regulations that result in a detrimental change in circumstances or a material hardship for the Contractor in performing this Contract may be the subject of a request by the Contractor for a rate adjustment, subject to review and approval by the City, <u>such approval not to be unreasonably withheld</u> at the City’s sole option.”	<p>Change is acceptable with the following language:</p> <p>Except to the extent addressed otherwise in this Contract, changes in federal, State, or local laws or regulations that result in a detrimental change in circumstances or a material hardship to the Contractor in performing this Contract may be the subject of a request by the Contractor for a rate adjustment, subject to review and approval by the City, <u>such approval not to be unreasonably withheld</u>.</p>	The contract has been revised.
143.	Contract §4.3	Republic Services	<p>The last sentence of Section 4.3 should apply in the case of any review of financial or other proprietary Contractor records relevant to a proposed rate adjustment. The language should more clearly require (not simply permit) steps to maintain the confidentiality of financial or other proprietary information of the Contractor.</p> <p>Revise the second sentence of Section 4.3 to read as follows:</p> <p>If the City requires review of financial or other proprietary information in conducting its rate review under this or any of the other provisions of this Agreement, then, if requested by the Contractor, the City shall retain a third-party to review such information at the Contractor’s expense, and shall take such other steps are reasonably feasible and appropriate to protect the confidential nature of Contractor’s documents and preserve the Contractor’s ongoing ability to remain competitive.</p>	<p>Change is acceptable with the following language:</p> <p>If the City requires review of financial or other information in conducting its rate review under this provision, then, at the request of the Contractor, the City may retain a third-party to review such information for the City at the Contractor’s expense, taking whatever steps are reasonably feasible, appropriate and lawful to protect Contractor documents identified as confidential and proprietary by the Contractor.</p>	Contract language has been revised.
144.	Contract §5.1	Waste Management	The Performance Fees outlined in the draft contract are 50% higher than performance fees in the City’s current contract. Such a significant increase seems out of balance and not relational to the effect, action, or omission described in this	The performance fees are intended to provide a “... reasonable estimate of the damages sustained by the City as a result of the Contractor's failure to satisfactorily perform its duties under this	No changes.

			Section. Please clarify the City’s intent in escalation and consider reduced values.	Contract.” and are reflective of the costs the City will bear in seeking recompense.	
145.	Contract §5.1	Republic Services	<p>Clarify – Performance Fee #7. Ambiguous language using “the following day” twice in a row.</p> <p>Revise the Performance Fees #7 description to read:</p> <p>Two hundred fifty dollars (\$250) per block segment if collection is performed the day after notice of the missed collection; one thousand dollars (\$1,000) if not collected by the second day after notice of the missed collection.</p>	<p>The original wording seems sufficiently clear and has been retained. Note that the penalty triggers on the event, not notice of the event.</p>	The contract has been revised.
146.	Contract §5.1	Republic Services	Clarify – Performance Fee #16 relating to hold-time requirement. Remove, if Contractor Customer service representatives answer/help one customer at a time.	See response number #106.	No changes.
147.	Contract §5.2	Republic Services	<p>Contract default must be material. For elimination of doubt, the fourth paragraph should give a surety that steps into performance the right to payment for its services.</p> <p>Revise the first sentence of the third paragraph to read:</p> <p>If the Contractor abandons or violates any material portion of this Contract, fails to fully and promptly comply with all its obligations, or fails to give any reason satisfactory to the City for noncompliance, and fails to correct the same, the City, after the initial ten (10) days’ notice, may then declare the Contractor to be in default of this Contract and notify the Contractor of the termination of this Contract.</p> <p>Add at the end of the next-to-last paragraph of the section the following:</p> <p>A surety performing under this Contract shall be entitled to payment in accordance with this Contract for services provided by the surety, and shall otherwise be subject to the same rights and obligations with respect to the services furnished by the surety as would be applicable if the services were to be performed by the Contractor. The City’s obligation to pay for such services shall be subject to setoffs or recoupments for sums, if any, owed by Contractor to City on account of Contractor’s abandonment or default.</p>	<p>Agreed as follows:</p> <p>The revision to the first sentence of the third paragraph is acceptable.</p> <p>The City agrees to add the following at the end of the next-to-last paragraph:</p> <p>A surety performing under this Contract shall be entitled to payment in accordance with this Contract for Contract services provided by the surety, and shall otherwise be subject to the same rights and obligations with respect to the Contract services furnished by the surety as would be applicable if the Contract services were to be performed by the Contractor. The City’s obligation to pay for such Contract services shall be subject to satisfactory performance by the surety as well as to setoffs or recoupments for sums, if any, owed by Contractor to City on account of Contractor’s abandonment or default.</p>	The contract has been revised.
148.	Contract §7.1	Republic Services	<p>We hope the City will support the Contractor in the event collection rights are violated. The provision should strike a fair balance in dealing with this issue.</p> <p>Revise the first paragraph of the section to read:</p> <p>The Contractor shall be the exclusive provider with which the City shall contract to collect Garbage, Compostables and Recyclables placed in designated Containers and set out in the regular collection locations within the City Service Area. The City, by ordinance or other regulation, or by other effective means, will preclude the provision by any third party of any of the services to which the Contractor has the right by this Contract to be the exclusive provider. When asked by the Contractor, the City shall make a good faith effort to protect the exclusive rights of the Contractor under this Contract; however, the City shall not be obligated to instigate, join in or contribute to the expense of litigation to protect the exclusive rights of the Contractor unless the City’s institution of or joinder in such litigation is necessary for the protection of such rights. The Contractor may independently enforce its rights under this Contract against third party violators, including, but</p>	<p>Agreed as follows:</p> <p>Throughout the Contract Term, the Contractor shall be the exclusive provider with which the City shall contract to collect Garbage, Compostables and Recyclables placed in designated Containers and set out in the regular collection locations within the City Service Area. The City, by ordinance or other regulation, or by other effective means, will make unlawful the provision by any third party of any of the services to which the Contractor has the right by this Contract to be the exclusive provider. When asked by the Contractor, the City shall make a good faith effort to protect the exclusive rights of the Contractor under this Contract; however, the City shall not be obligated to instigate, join in or contribute to the expense of litigation to protect the exclusive rights of the Contractor unless the City’s institution of or joinder in such litigation is</p>	The contract has been revised as appropriate.

			not limited to, seeking injunctive relief, and the City shall use good faith efforts to cooperate in such enforcement actions brought by the Contractor (without obligating the City to join any such litigation, except for as provided in this paragraph). Such efforts may include but not be limited to cease and desist letters, assistance with documenting violations, and other activities as City staff time reasonably allows.	necessary for the protection of such rights. The Contractor may independently enforce its rights under this Contract against third party violators, including, but not limited to, seeking injunctive relief, and the City shall use good faith efforts to cooperate in such enforcement actions brought by the Contractor (without obligating the City to join any such litigation, except for as provided in this paragraph). Such efforts may include but not be limited to cease and desist letters, assistance with documenting violations, and other activities as City staff time reasonably allows.	
149.	Contract §7.2	Republic Services	The extent to which records are subject to disclosure is a matter addressed in 7.6, and the last paragraph of this section 7.2 should be removed. Remove the last paragraph of the section.	Accepted.	Change made.
150.	Contract §7.3	Republic Services	Reserve the right to add Republic Services insurance specificity if selected as Contractor.	Noted. The City understands that each proponent will have slightly different insurance coverage and will adapt the contract accordingly, provided that no reduction in limits or effective coverage occurs.	No changes.
151.	Contract §7.5.1	Republic Services	<p>Revise proviso at the end of the first paragraph to eliminate clause (1). The Contractor’s obligation to defend, indemnify and hold harmless should not apply to the extent of the City’s fault – it would not be fair to require a complete indemnity if, for example, the City were 99% at fault and the Contractor only 1% at fault.</p> <p>Revise proviso at the end of the first paragraph to read:</p> <p>provided, however, that the Contractor’s obligation to indemnify, defend, and hold harmless for injuries, sickness, death, damage, or destruction caused by or resulting from concurrent willful or negligent acts or actions of the Contractor and the City, its officers, agents or employees, shall apply only to the extent of the Contractor’s negligence or willful misconduct.</p>	<p>The City’s intent is to provide for mutuality in indemnification, hold harmless and defense. It also intends (and has added language addressing) Contractor’s waiver of immunity under Washington’s industrial insurance statute. Accordingly, the first paragraph and its provisos has been modified to read as follows:</p> <p>Each Party, its officers, employees, volunteers and agents, shall indemnify, hold harmless and defend the other Party, its officers, employees, volunteers and agents, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, including costs and attorney’s fees, related to injuries, sickness or the death of any person, or damage to or destruction of any property of any kind, whether tangible or intangible, including loss of use resulting therefrom (all of the foregoing collectively, “Claims) arising out of, in connection with, or incident to the work and services performed under this Contract to the extent of such indemnifying Party’s negligence; provided, however, that:</p> <ol style="list-style-type: none"> 1. The indemnifying Part’s obligation to indemnify, hold harmless and defend shall not extend to Claims caused by or resulting from the sole willful or negligent actions or omissions of the non-indemnifying Party; and 2. It is specifically and expressly understood and agreed that the indemnification obligations of the Contractor hereunder constitutes the Contractor’s waiver of immunity under 	The contract language has been modified to make each party responsible for its sole negligence and for its negligent acts to the extent of its negligence. Contractor wavier of immunity under Washington industrial insurance statute has been added. In addition, definitions for “Party” and “Parties” have been added to the contract.

				Industrial Insurance, Title 51 RCW, solely for the purposes hereunder.	
152.	Contract §7.6	Republic Services	<p>We do not believe that the section states things correctly, as it may be read to say that Contractor records generated in the course of performance of the Contract are to be public records even if those records are not ones that are provided to the City.</p> <p>The pertinent statute is the Public Records Act, not the Public Disclosure Act.</p> <p>To the extent the City notifies the Contractor of a PRA request, the notification should be made in writing and should include a copy of the request. If the Contractor takes judicial action to prevent disclosure of a record, the City should be willing to await a determination of the matter before making the record available to the person making the PRA request.</p> <p>With respect to cost for copies as stated in the final paragraph of this section, it is subject to negotiation. The section should be revised to read:</p> <p>7.6 Confidentiality of Information</p> <p>Under Washington State law, documents (including but not limited to written, printed, graphic, electronic, photographic or voice mail materials and/or transcriptions, recordings or reproductions thereof) prepared in performance of this Contract (the “documents”) by or submitted to the City may be public records subject to mandatory disclosure upon request by any person, unless the documents are exempt from public disclosure by a specific provision of law.</p> <p>If the City receives a request for inspection or copying of any such documents, it shall promptly notify the Contractor in writing regarding the public records request, as allowed by Chapter RCW 42.56.540. The Contractor shall be provided ten (10) business days after such notification within which to seek a court order prohibiting the release of the records. The City assumes no contractual obligation to enforce any exemption. Nevertheless, if the Contractor within such 10-day period initiates action for a court order prohibiting the release of any records, the City agrees to await a determination with respect to the matter before releasing the applicable records.</p> <p>In the event that the Contractor provides records to the City in pursuant to this section, it shall provide them for free if provided electronically, or at no more than 15 cents per page if provided as paper copies.</p>	<p>The City is not in a position to determine whether any particular document that may be generated by the Contractor in the course of its performance under the Contract, but not provided to the City, will or will not constitute a public record subject to disclosure. This is an constantly evolving area of the law and the rules regarding, for example, what is “retained” or “used” by agencies can be expected to evolve or become clearer over time as well. The City supports giving the Contractor the opportunity to seek injunctive relief to prevent disclosure whenever possible with respect to requested records the Contractor believes are not subject to disclosure.</p> <p>The statutory reference has been changed.</p> <p>The City has agreed to the following language:</p> <p>Pursuant to the Washington Public Records Act (“PRA”), Chapter 42.56 RCW, written, printed, graphic, electronic, photographic or voice mail materials and/or transcriptions, recordings or reproductions thereof prepared in performance of this Contract (the “documents”) and maintained or used by the City may be public records subject to mandatory disclosure upon request by any person, unless the documents are exempt from public disclosure by a specific provision of law.</p> <p>If the City receives a request for inspection or copying of any such documents, it shall promptly notify the Contractor in writing regarding the public records request. Consistent with its obligations under the PRA, the City will give the Contractor up ten (10) business days after such notification within which to seek a court order prohibiting the release of the documents. The City assumes no contractual obligation to enforce any exemption.</p>	The contract has been revised as appropriate.
153.	Contract §7.7.2	Republic Services	<p>Contractor should be able to sub-contract for services that do not directly affect Customers. Revise the first paragraph to read:</p> <p>The Contractor shall not assign or sub-contract any of the services provided under this Contract that directly affect Customers or delegate any of its duties under this Contract without the prior written approval of the City, which may be granted or withheld in the City’s sole discretion.</p>	Agreed.	The contract has been revised.
154.	Contract §7.7.3	Republic Services	<p>This section seems to confuse two different things – the Contractor’s legal name and the name under which the Contractor does business (i.e., it’s “trade name”). A business is not required by law to use its formal legal name – it may choose to</p>	Agreed.	The contract has been revised.

			<p>conduct business under a trade name. Even if it changes its legal name, it may still do business under its trade name. Plenty of companies have undergone multiple changes in legal name without changing the trade name under which they conduct business and thus the name by which they are known to the public.</p> <p>The section should be revised to read:</p> <p>7.7.3 Change of Trade Name</p> <p>In the event the Contractor wishes to change the trade name under which it does business under this Contract, the Contractor shall designate to the City the name, logo, and colors under which it will be doing business in writing to the City at least thirty (30) days prior to the effective date of its change of trade name. Within a reasonable period following a change of trade name by the Contractor, all items, logos, articles, and implements seen by the public shall be changed, including but not limited to letterhead, signs, promotional materials, website pages, billing statements, envelopes, and other items. Vehicles are the only exception; vehicles must be repainted with new trade name, and any new logo or colors, within two (2) years of the effective date of the change of trade name. Failure to comply with the terms of this section shall result in penalties assessed against the Contractor in accordance with Section 5.1.</p>		
155.	Contract §7.9	Republic Services	<p>Since the section provides the City with the right to terminate for a violation of the section, the violation should be a material one. Inconsequential violations should not be a basis for termination.</p> <p>A right of “partial” termination wouldn’t seem to make any sense.</p> <p>Change the second sentence of the first paragraph of the section to read as follows:</p> <p>Any material violation of the provisions of this section shall be grounds for termination or suspension of the Contract by the City, and may result in the Contractor’s ineligibility for further work for the City.</p>	Agreed in part, denied in part. Compliance with all applicable laws is considered material by the City. The Contract includes opportunities to cure that would presumably apply in situations involving “inconsequential violations.” The City agrees that partial termination does not make good sense, and so the phrase “in whole or in part,” has been deleted.	The contract has been revised.
156.	Contract §7.13	Republic Services	<p>The concept and process of an “adjudication” of bankruptcy was part of the old federal Bankruptcy Act, but is not part of the Bankruptcy Code that has been in place since 1978. Under the Bankruptcy Code, the determination that the debtor’s estate will be administered in bankruptcy takes the form of an “order for relief.” The filing of a voluntary bankruptcy petition operates as an order for relief. In an involuntary case, an order for relief is filed if the debtor fails to successfully oppose the involuntary bankruptcy petition.</p> <p>The section should be revised to read:</p> <p>7.13 Bankruptcy</p> <p>It is agreed that if an order for relief with respect to the Contractor is entered in any bankruptcy case, either voluntarily or involuntarily, in which the Contractor is a debtor, then this Contract, at the option of the City, may be terminated effective on the day and at the time the order for relief is entered.</p>	Agreed.	The contract has been revised.
157.	Contract §7.14	Republic Services	<p>For elimination of doubt, the section should make it clear that the right to renegotiate does not carry with it a right to terminate the contract if renegotiation fails to result in amendments. Add to the section the following new third</p>	The City does not consider this necessary. The obligation is to negotiate in good faith and the Contract may be amended only by agreement of the parties.	No changes.

			<p>paragraph:</p> <p>A failure by the parties to reach agreement on any matter as to which either party has a right to renegotiate under this section or under any other section of this Contract shall not in and of itself result in a termination of this Contract or give rise to any right on the part of either party to terminate this Contract, nor shall a failure of the parties to reach such an agreement otherwise affect the validity or enforceability of this Contract.</p>		
158.	Contract: Multiple Sections – Drafting comments	Recology	<p>Since the City will initially bill customers, the definition of “Billing Operations Plan” and the last clause of §7.11 can be deleted.</p> <p>As C&D is not normally considered a special waste, we suggest deleting or clarifying “demolition debris” in the definition of “Special Waste.”</p> <p>In the 3rd-from-last paragraph of §3.1.19, we believe it should read: “The performance fees listed as 2 through 4” (rather than “3 through 4”).</p> <p>In §3.2.10, to clarify that the lists of facilities and parks are complete as of the date hereof, we suggest revising the sentences right before the lists to read: “As of the date hereof, these [facilities/parks] consist of the following:”. Addition of new facilities/parks is covered in the last paragraph of the section.</p> <p>It appears the 2nd sentence of the 2nd paragraph of §3.3.3.2 should read: “The <u>City Contractor</u> shall ensure that all new accounts are assigned an appropriate City reference number....”</p> <p>In §4.2.5, “or fees” should be inserted in the 1st sentence so it reads “...or the rates of existing taxes <u>or fees</u> are changed...”, to match the first part of the sentence.</p> <p>In Attachment C, under Paper Containers, we believe it should read “All empty, <u>unused</u> paper cups and plastic food cartons.”</p>	The edits are noted.	The contract has been revised.
159.	Contract – Attachment C	Waste Management	<p>In the event the City selected alternative 2-Customer Service and Recycling Center would the City consider removing any of the new additions to the curbside recycling program such as Styrofoam and fluorescent tubes since a new local drop off center would be available?</p>	Yes, the City would consider removing some items collected curbside if a Customer Service and Recycling Center is selected as an alternative by the City.	No change.